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The fact there was that all the co-sharers in the village were admittedly in possession of specific pieces of land, and the only question between the parties was whether the partition had given them the title to the partitioned land. This distinguishes that case from the present one, and therefore in our opinion that case does not conflict with our decision in the present case.

For the reasons then which I have given we think that the judgment dismissing the suit was right, although we do not agree with the reasons which the District Judge has given for dismissing it. In the result this appeal must be dismissed with costs.

T. A. P. *Appeal dismissed.*

CRIMINAL REVISION.

Before Mr. Justice Macpherson and Mr. Justice Trevelyan.

IN THE MATTER OF MADHUB CHUNDER MOZUMDAR (PETITIONER) *v.* NOVODEEP CHUNDER PUNDIT (OPPOSITE PARTY).*

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Criminal Procedure Code (Act X of 1882*), s.* 487*—Judicial proceeding—Sanction to prosecute—Criminal Appeal, Hearing of by District Judge who has granted sanction to prosecute—Penal Code, s.* 210.

A complainant applied to a Munsiff for sanction to prosecute a decree-holder for an offence under s. 210 of the Penal Code, and upon the Munsiff's refusing such application preferred an appeal to the District Judge, who granted the sanction asked for. The decree-holder, having been prosecuted and convicted before a Deputy Magistrate, preferred an appeal, which came on for hearing before, and was disposed of by, the same District Judge who had granted the sanction.

Held, that the words "shall try any person," as used in s. 487 of the Code of Criminal Procedure, include the hearing of an appeal, and that the hearing of the appeal from the order of the Munsiff refusing sanction was a judicial proceeding within the meaning of the Code, and consequently that, under the provisions of s. 487, the District Judge had no jurisdiction to entertain the appeal against the judgment and sentence passed by the Deputy Magistrate.

THE facts which gave rise to this application were as follow: On the 15th September 1885 the petitioner, Madhub Chunder Mozumdar, obtained a decree for Rs. 44-7-6 against Novodeep Chunder Pundit and his brother in the Chandpur Munsiff's Court.

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On the 12th December 1887 the petitioner took out execution of the decree against his judgment-debtors; and, although they declared that the decree had been already satisfied, they were compelled to pay the amount decreed into Court, as satisfaction of the decree had never been certified to the Court.

On the 9th January 1888 Novodeep and his brother preferred a complaint before the Magistrate against the petitioner charging him with offences under ss. 210 and 417 of the Indian Penal Code in respect of the execution of the decree, and were ordered by the Magistrate to procure the Munsiff's sanction to prosecute within seven days. On the 20th January the complainants applied for permission to withdraw the charge, on the ground that they were about to take proceedings against the petitioner in the Civil Court. They at the same time stated in their application that they would come forward at a future time with the Munsiff's sanction for the prosecution of the petitioner. The Magistrate thereupon dismissed the complaint under s. 203 of the Criminal Procedure Code. Some time afterwards the judgment-debtors obtained a decree for the refund of their money against the decree-holder (the petitioner), and applied to the Munsiff for sanction to prosecute him. Sanction was refused by the Munsiff, but was granted by the District Judge upon an application being made to him.

Thereupon the present prosecution was instituted, and resulted in the conviction of the petitioner under s. 210 of the Indian Penal Code by the Magistrate, who sentenced him to six months' rigorous imprisonment and a fine of Rs. 100, or in default of payment of such fine to a further period of 1½ month's rigorous imprisonment.

Against that conviction and sentence the petitioner appealed to the District Judge, who dismissed the appeal.

The following is the material portion of the judgment of the District Judge:—

"It is contended in appeal that the Magistrate, having once dismissed the case under s. 203 of the Criminal Procedure Code, had no power to take it up again of his own motion. I have carefully considered the arguments on this point advanced by the learned pleader for the defence, but I am unable to accept them. It is not at

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all clear from the terms of s. 437 of the Criminal Procedure Code that it is only the District Magistrate who can of his own motion take up again a complaint already dismissed under s. 203 of the Criminal Procedure Code, and I do not think it can have been the intention of the Legislature to tie the hands of Subordinate Magistrates, and especially Sub-Divisional Magistrates, in the manner contemplated by such a very strict interpretation of the section. Even allowing, however, that the proceedings of the Magistrate in the present case were irregular, I think the irregularity is cured by s. 537 of the Criminal Procedure Code, as the accused does not appear to have been in any way prejudiced in his defence by the action of the Magistrate. On the legal ground, therefore, this appeal must fail.

"The other ground taken by the appellant is that the evidence for the prosecution is untrustworthy. I am unable to agree in this view. The evidence of the prosecutor and of his nephew, Rukini, as to the voluntary payment in Falgoon, 1292 B. S., of the decretal amount by the judgment-debtors to the decree-holder (appellant) is corroborated by the certified copy of the decree, which bears an endorsement in what clearly appears to be the appellant's handwriting, to the effect that the decree has been satisfied. The appellant fails to show that this document came into the hands of the prosecutor in any other way than that alleged by the prosecutor, *viz.*, that he received it from the appellant; and, this being so, and considering that the handwriting of the endorsement so closely resembles the admitted handwriting of the appellant, I believe that the prosecutor is speaking the truth in saying that he had already paid the money when the appellant took out execution against him.

"On the whole, after careful consideration of the case, I have no doubt that the appellant has been rightly convicted. The sentence is severe, but I am not prepared to say it is excessive. The appeal is dismissed."

The petitioner thereupon applied to the High Court under its revisional powers to send for the record and to set aside the conviction and sentence upon, amongst others, the following grounds:—

(1) That as the complaint of the complainant had been once dismissed under s. 203 of the Criminal Procedure Code, the

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Deputy Magistrate had no jurisdiction to entertain the complaint unless empowered by the High Court or Court of Sessions, or District Magistrate, in accordance with the provisions of s. 437 of that Code.

(2) That the Court of appeal had erred in law in holding that the said defect of jurisdiction was cured by s. 537 of the Criminal Procedure Code.

(3) That as the question raised on the merits related to the discharge or satisfaction of a decree, and as the complainant, the judgment-debtor, did not admittedly raise this objection in the execution department, the Courts below had erred in law in having recognised such alleged private adjustment, and in having allowed him to adduce oral evidence on that point.

(4) That the learned Judge having granted sanction ought not to have heard the appeal under s. 487 of the Criminal Procedure Code.

Upon that application a rule was issued which now came on to be heard.

Mr. *M. Ghose* and Baboo *Kashi Kant Seal* for the petitioner.

Baboo *Surendro Nath Mutty Lall* for the opposite party.

The judgment of the High Court (MACPHERSON and TREVELYAN, JJ.) was delivered by

TREVELYAN, J.—Two main questions have been argued before us. In the first place it is contended that the Judge had no jurisdiction to entertain the appeal, and secondly that no offence had been committed.

The first question turns upon the construction of s. 487 of the Code of Criminal Procedure. The Sessions Judge who tried the case, Mr. Cameron, had given sanction for the institution of the charge. The charge was one under s. 210 of the Indian Penal Code for causing a decree to be executed against the complainant after it had been satisfied. The Munsiff had refused sanction; the Judge had given it. A prosecution was accordingly instituted, and the case was heard by a Deputy Magistrate, and then came up on appeal before the Judge who had given sanction.

Section 487 provides that, except as provided in certain of the preceding sections, no Judge of a Criminal Court or Magistrate

other than a Judge of the High Court shall try any person for any offence referred to in s. 195, when such offence is committed before himself or is brought under the notice of such Judge or Magistrate in the course of a judicial proceeding.

In the first place there can be no doubt, we think, that the trial of an appeal is included in the expression "shall try any person." The offence which is charged was undoubtedly an offence referred to in s. 195, and the offence charged here is one of the offences mentioned in that section. The only real question as to the applicability of s. 487 is, whether the offence was brought under the notice of this Judge in the course of a judicial proceeding.

With regard to that there can be no doubt that the hearing of the appeal from the order refusing the sanction was a judicial proceeding within the meaning of the Code of Criminal Procedure. That Code defines "judicial proceeding" as any proceeding in the course of which evidence is or may be legally taken. On the appeal from the order of the Munsiff refusing sanction, the Judge undoubtedly had power to take evidence, and therefore it was a judicial proceeding, and it was in the course of that proceeding that the offence was brought under his notice, because the appeal was with reference to the refusal to sanction the prosecution. When that offence is established, s. 487 applies, and the Judge had no jurisdiction to entertain the appeal.

With regard to the second objection, inasmuch as there will be a fresh trial, we think it undesirable to prejudge the question now. It will be open to the defendant to argue it when the appeal is heard and all the facts have been gone into (1). Under the circumstances we think it would be better that the appeal should be heard in this Court, and we direct that it be so heard, and that notice thereof be given to both parties and to the Magistrate. The prisoner to be released on bail to the satisfaction of the Magistrate pending the hearing of the appeal.

H. T. H. *Rule made absolute.*

(1) See next case.